

**Internal Revenue Service**

Number: **201103030**

Release Date: 1/21/2011

Index Number: 1361.05-00, 9100.31-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:03

PLR-132013-10

Date:

September 24, 2010

Legend

Parent =

Subsidiary =

Date2 =

Shareholders =

Dear :

This letter responds to your letter dated July 19, 2010, and subsequent correspondence, submitted on behalf of Parent, requesting an extension of time under § 301.9100-1(c) of the Procedure and Administration Regulations to elect to treat Subsidiary as a qualified subchapter S subsidiary (QSub) for federal tax purposes.

### Facts

Parent was organized on Date2 under the laws of State and elected under § 1362(a) of the Internal Revenue Code to be an S corporation effective on Date2. Shareholders held all of the stock of Parent on Date2. On Date2, the Shareholders, who also owned all of the stock of Subsidiary, an S corporation, contributed all of their shares in Subsidiary to Parent as additional paid in capital. Parent intended to make a QSub election for Subsidiary, effective Date2. However, Parent inadvertently failed to timely file the proper election.

### Law and Analysis

Section 1361(a)(1) provides that the term “S corporation” means, with respect to any tax year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(3)(A) provides that a QSub shall not be treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1361(b)(3)(B) defines a QSub as a domestic corporation that is not an ineligible corporation, if 100 percent of the stock of the corporation is owned by an S corporation, and the S corporation elects to treat the corporation as a QSub.

Section 1.1361-3(a) provides that a taxpayer makes a QSub election with respect to a subsidiary by filing a Form 8869, Qualified Subchapter S Subsidiary Election, with the appropriate service center.

Section 1.1361-3(a)(4) provides that a QSub election will be effective on the date specified on the election form or on the date the election is filed if no date is specified. The effective date specified on the election form cannot be more than two months and 15 days prior to the date of filing.

Section 1.1361-3(a)(6) provides that an extension of time to make a QSub election may be available under the procedures applicable under §§ 301.9100-1 and 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in § 301.9100-2 and § 301.9100-3 to make regulatory elections. Section 301.9100-1(b) defines a regulatory election as an election with a due date prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) provides that requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

### Conclusion

Based solely on the facts submitted and the representations made, we conclude that Parent has satisfied the requirements of §§ 301.9100-1 and §§ 301.9100-3. As a result, Parent is granted an extension of time of 120 days from the date of this letter to file a Form 8869 to elect to treat Subsidiary as a QSub effective Date2. This ruling is contingent on Subsidiary filing a final income tax return for its taxable year ending on Date1. See § 1.1361-4(b)(3)(ii).

A copy of this letter must be attached to any QSub election and any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Except for the specific rulings above, no opinion is expressed or implied concerning the tax consequences of this case under any other provision of the Code. Specifically, no opinion is expressed or implied regarding Parent's eligibility to be an S corporation or Subsidiary's eligibility to be a QSub.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party.

While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

By: /s/  
James A. Quinn  
Senior Counsel, Branch 3  
Office of Associate Chief Counsel  
Passthroughs & Special Industries

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes